

**REMARKS**

Claims 1-13, 26-30, 50-58, 66-70, 77-121 were presented for examination and were pending in this application. In an Office Action dated April 20, 2004, claims 1-13, 26-30, 50-51, 53-58, 66-70, and 77-121 were rejected. Claim 52 does not appear to have been examined. Applicants therefore request clarification from Examiner as to the status of this claim, in the next Office Action that should properly be non-final. In addition, in some cases, the basis for rejection of certain claims as described in the headings provided by Examiner did not seem to match the basis for rejection as described in the body of the Office Action. (Compare for instance, paragraph 9 of the office action, which refers to claims 83 and 93 as rejected by a combination of O'Neil and Halbert, and page 14, where the remarks for claims 83 and 93 discuss only O'Neil.) Applicants' representatives have thus done their best to respond to the arguments that appeared to be contained in the Office Action but respectfully request some clarification or greater consistency in referring to rejection bases in subsequent amendments.

Applicants thank Examiner for examination of the remaining pending claims in this application and addresses Examiner's comments below. Based on the above Amendment and the following Remarks, Applicants respectfully request that Examiner reconsider all outstanding objections and rejections, and withdraw them.

**Claim Rejections Based on Patents Under Obligation to Assign to Common Owner**

Examiner rejected claims 1-13, 26-30, 50-51, 53-58, 66-68, 70, 77-79, 81-85, 88-89, 91-95, 97-102, 104, 107, 110, 113, 117-119, and 121 under 35 USC § 103(a) as unpatentable in view of US Patent 6,101,484 to Halbert and various combination of other references. To

the extent Halbert constitutes prior art to the current application, it constitutes prior art only under 35 USC § 102(e). (see page 6, Office Action) In addition, Examiner rejected claims 82, 84-85, 92, and 94-95 under 35 USC § 103(a) as unpatentable in view of US Patent 6,631,356 to Van Horn in combination with O'Neil and Skhedy. To the extent Van Horn or Halbert constitutes prior art to the current application, it constitutes prior art only under 35 USC § 102(e). Furthermore, both patents share a common inventor with the current application.

Because the instant application was filed after November 29, 1999, these rejections may be overcome in accordance with 35 USC § 103(c), which provides that

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person

#### **Statement of Common Ownership**

The present application and Halbert, at the time the invention of the present application was made, subject to an obligation of assignment to Mercata, Inc. In addition, the present application and Van Horn were, at the time the invention of the present application was made, subject to an obligation of assignment to Mercata, Inc.

On this basis, Applicants respectfully request that Examiner withdraw his rejection of claims 1-13, 26-30, 50-51, 53-58, 66-68, 70, 77-79, 81-85, 88-89, 91-95, 97-102, 104, 110, 113, 117-119, and 121 on the basis of these arts. MPEP 706.02(1)(2). Applicants accordingly assert that the claims are patentable over the cited arts and therefore request allowance.

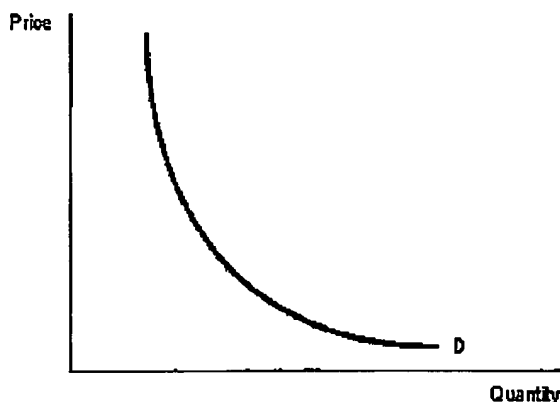
**Rejection of Claims Based Exclusively on O'Neil**

Examiner rejected remaining claims 69, 80, 86-7, 90, 96, 103, 105-106, 108-109, 111-112, 114-116, and 120 as anticipated under 35 USC § 102(e) by O'Neil. Claims 69, 80, 86, 96, 116, and 120 each depend from independent claims rejected under 103(a) on the basis of either or both of Van Horn and Skhedy. As addressed, these rejections have been overcome by the statements of common ownership provided above. The arguments advanced above with respect to the independent claims are hereby incorporated so as to apply to the dependent claims. Applicants accordingly assert that these dependent claims are patentable over the cited arts and therefore request allowance.

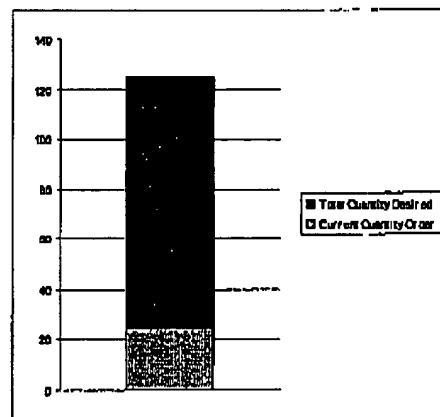
Each of remaining claims 87, 103, 105-106, 108-109, 111-112, and 114-115 recites "on-line group-buying." As explained at length in the last office action response, O'Neil does not disclose "on-line group-buying," a generally collaborative process in which the buyers use their combined purchasing power to drive down the price of goods sold and purchase the goods at the same reduced price. Instead O'Neil discloses a "Semi Real-time Auction," "Large Quantity of Sales," and "a hybrid of an auction along with a large quantity of sales scenario." Col. 25, lines 14-19; Col. 34, lines 27-29. None of these suggests or discloses on-line group buying – "auctions" as disclosed in O'Neil are competitive, not collaborative affairs, where buyers attempt to outbid each other and the price goes up not down; "and large quantity of sales" does not disclose group buying, but merely that a seller sells a large quantity of a good. The combination of these two concepts into a "hybrid of an auction along with a large quantity of sales" does not supply the missing ingredients – in the prior art price still goes up whereas price is driven down in on-line group buying as claimed.

In addition, the disclosed process is essentially competitive, whereas on-line group buying is collaborative in nature.

Furthermore, claims 105 and 116 each disclose a “demand curve.” Examiner admits that O’Neil does not teach the display of a demand curve. (Office Action, page 25). O’Neil’s disclosure that “Some Advertisers may desire to display real-time information in the ProductInfo Runnable such as the current quantity ordered and the total quantity desired.” Col. 34, lines 34-36 does not disclose or suggest a “curve.” By definition a curve represents at least two parameters – one for each axis. But O’Neil discloses only one parameter – “quantity.” As can be seen in the drawing below, disclosure of one dimension – quantity – does not encompass or suggest a curve.



Example Curve



Visual Depiction of O’Neil Disclosure

Conclusion

In sum, Applicants respectfully submit that all pending claims are patentably distinguishable over the cited references. Therefore, Applicants request reconsideration of the basis for the rejections to these claims and request allowance of them. In addition, Applicants respectfully invite Examiner to contact Applicants' representative at the number provided below if Examiner believes it will help expedite furtherance of this application.

Respectfully Submitted,  
Tom Van Horn *et al.*

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